 DEPARTMENT OF ENVIRONMENTAL QUALITY	LAND & WATER MANAGEMENT DIVISION GUIDANCE DOCUMENT	NUMBER: 353-95-02 DATE: 12/28/95 REV. DATE: 06/05/07
SUBJECT: REVIEW OF SHORE PROTECTION STRUCTURE UNDER PART 353, SAND DUNES PROTECTION AND MANAGEMENT		PAGE: 1 of 4
SECTION AND/OR UNIT: Lakes Streams and Shorelands Section	APPROVAL SIGNATURE: TITLE: Elizabeth M. Browne, Acting Chief	ALSO SEE:

APPLICABLE STATUTES

Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) being Sections 324.35301 to 324.35326 of Michigan Compiled Laws.

PURPOSE

The installation of shore protection structures within designated Critical Dune Areas is regulated under Part 353, because it is a developmental activity as well as a contour change. Although these structures often are reviewed under Part 301, Inland Lakes and Streams, or Part 325, Great Lakes Submerged Lands, of the NREPA, the physical environment in Critical Dune Areas as well as the statutory requirements under Part 353, requires a different level and focus of review. This guidance provides insight into specific concerns associated with shore protection devices in a dune environment as well as directions for field and office review of such permit application files.

FORMS USED

EQ 2738, Critical Dune Area Project Review Report

DISCUSSION

Section 35316(2) requires that a structure be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. Shore protection structures qualify as "structures" under Part 353, for the same reason the "plunge pool" in the Dune Harbor Estates Proceedings was found to be a structure (*Dune Harbor Estates v Michigan Department of Environmental Quality, 2006*). Since Part 353 does not define "structure" the courts have turned to the common dictionary definitions: The Oxford English Dictionary defines "structure", in part as, "That which is built or constructed. a. A building or edifice of any kind, esp. a pile of building of some considerable size and imposing appearance." Black's Law Dictionary defines "structure" as, "Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together."

A special exception is required for a shore protection structure in a critical dune area, because it is a structure lakeward of the dune crest [see Section 35316(1)(c) in conjunction with Section 35316(2)].

A coordinated effort is needed for reviewing applications for shore protection structures in which jurisdiction also falls under Part 301 or Part 325. If the Part 301/Part 325 field representative is a different individual than the person responsible for Part 353 applications, field representatives should discuss the application before issuing a permit ensuring that the requirements of all applicable statutes are met. Remember that all groin applications under Part 325 require public noticing.

INSTRUCTIONS

1. If the shore protection structure falls under multiple jurisdictions of Parts 301, 325, or 353, copies of the Joint Permit Application should be provided to all involved field representatives. If and when a permit is issued, it should be issued under all applicable statutes with appropriate conditions. It is recommended that the Part 353 staff act as the primary file manager, because of the intricacies involved in the Critical Dune regulations as related to shore protection.
2. Field staff should conduct a site inspection clearly documenting in the project review report (EQ 2738) all of the reasons why the proposed shore protection structure does not meet the requirements of Section 35316 (including 35316(c), which prohibits a structure lakeward of the crest). The site review should also begin to evaluate the factors to be considered under a special exception evaluation.

FIELD REVIEW UNDER PART 353 SHOULD INCLUDE:


- Contact Lansing LWMD staff to obtain historic shoreline recession rate information on the property.
- Determine the impact to the lakeward-facing slope where the project is proposed. Consideration should be given to the amount of excavation required as well as the ultimate height above grade (and impact to wind patterns/sand movement) of the proposed shore protection structures.
- Determine if there is existing access to the construction site or if an access road is proposed on slopes greater than 1:3 on the lakeward-facing slope.
- Identify and document areas having slopes greater than 1:3 that would be impacted by the structure or access road. Impacts including filling, excavation, vegetation removal, and/or construction on the slope.
- Determine if there is an existing erosion problem on the property and describe the severity of the problem.
- Determine if there are any buildings or other structures on the property in danger as a result of erosion. If there are buildings threatened by erosion, determine if there is sufficient room on the property to move the buildings landward.
- Note any alternative methods of shore protection that could be permitted that would reduce impacts to critical dune as compared to the proposed structure.

3. If a permit for the project as proposed can not be permitted, field staff should afford the applicant the opportunity to apply for a special exception in accordance with Section 35317. If the applicant applies for a special exception, staff should employ the standard operating procedure for special exception review.

The special exception panel will determine whether the project qualifies based on its merits. The review will ensure:

- Human health and safety are protected.
- Compliance with applicable local zoning, other state laws, and federal law.
- The protection of the dune resource is ensured.
- The problem for which relief is requested is not self-created, but rather due to the unique circumstances of the property.

The special exception review in these cases will often result in a balance of human health and safety with the protection of the dune resource. Shore protection structures are located at the toe of the dune in a windward location that is of critical importance to sand dune development and stability. The shore-perpendicular movement of sand, and wind currents that drive this movement, will be altered by the placement of a shore protection structure. Furthermore, the emplacement of shore-parallel structures causes the retention of upland sediments that are critical to the beach's natural morphologic response to increased wave energies and water levels. Such construction adversely impacts the beach's natural ability to protect itself through the attenuation of wave energy. Generally speaking, engineered shore protection structures are not consistent with the statutes' purpose of assuring "...protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured" [Section 35302(c)]. For this reason, it is expected that the installation of shore protection structures in Critical Dune Areas will be strictly limited to those sites where existing buildings are imminently threatened by erosion, with no option for moving the buildings to a safer, landward location.

 DEPARTMENT OF ENVIRONMENTAL QUALITY	LAND & WATER MANAGEMENT DIVISION OPERATING PROCEDURE	NUMBER: 353-07-01
		DATE: November 21, 2007
SUBJECT: Permit Duration Under Part 353, Sand Dune Protection And Management		
SECTION AND/OR UNIT: Lakes, Streams, and Shorelands Section	APPROVAL SIGNATURE:	ALSO SEE:
	TITLE: Elizabeth M. Browne, Chief	

PURPOSE: To establish the permit period for permits issued under Part 353.

APPLICABLE STATUTES:

Part 353, Sand Dune Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

DEFINITIONS: None

FORMS USED: None

INSTRUCTIONS:

Permits issued under this statute shall be issued for a period of two years. There will be no extensions provided unless and until the Director establishes a fee to cover the cost of processing extensions.